

STATE OF MICHIGAN
COURT OF APPEALS

PAUL B. STEEL and TERESA Y. STEEL,

Plaintiffs-Appellants,

v

IVANHOE HUNTLEY-OAKHURST
BUILDERS, L.L.C.,

Defendant-Appellee.

UNPUBLISHED

February 1, 2007

No. 271494

Oakland Circuit Court

LC No. 2006-073329-CK

Before: Borrello, P.J., and Jansen and Servitto, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the trial court's dismissal of their breach of contract and Michigan Consumer Protection Act (MCPA) claims under MCR 2.116(C)(7), on the basis that they were barred by the applicable six-year statutes of limitation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition may be granted under MCR 2.116(C)(7) when an action is barred by the statute of limitations.

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

Plaintiffs filed this action to recover damages arising from defendant's allegedly faulty construction of a new home. Defendant presented evidence that plaintiffs signed an acknowledgment of completion of construction on April 14, 1999, and that plaintiffs received a certificate of occupancy on April 15, 1999. Plaintiff did not file this action until March 2006. Plaintiffs do not dispute that their MCPA and breach of contract claims are governed by a six-

year statute of limitations, MCL 445.911(7) and MCL 600.5807(8), and that this action was filed more than six years after their claims first accrued. Plaintiffs argue, however, that defendant fraudulently concealed the defective construction and that they timely filed this action under MCL 600.5855. We disagree.

MCL 600.5855 provides:

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

In order for the statute of limitations to be tolled due to fraudulent concealment, the acts relied on must be fraudulent and of an affirmative character. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 642; 692 NW2d 398 (2004). “Fraudulent concealment means employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action.” *Lemson v Gen Motors Corp*, 66 Mich App 94, 97; 238 NW2d 414 (1975), quoting *DeHaan v Winter*, 258 Mich 293, 296; 241 NW 923 (1932). “The plaintiff must prove that the defendant committed affirmative acts or misrepresentations that were designed to prevent subsequent discovery. Mere silence is insufficient.” *Sills v Oakland Gen Hosp*, 220 Mich App 303, 310; 559 NW2d 348 (1996). “The plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment.” *Id.*

In this case, plaintiffs did not allege in their complaint any facts comprising fraudulent concealment. The only evidence of fraudulent concealment on which plaintiffs rely is that the allegedly defective work on the home was concealed by the house’s exterior trim. However, the trim was part of the house’s intended design and construction. Plaintiffs did not show that the trim was installed for the purpose of preventing plaintiffs from discovering the existence of a cause of action or that defendant engaged in other affirmative acts to conceal the existence of plaintiffs’ alleged claims. Plaintiffs’ reliance on cases discussing fraud in real estate transactions is misplaced because those cases do not involve fraudulent concealment under MCL 600.5855.

Accordingly, the trial court did not err in granting defendant’s motion for summary disposition under MCR 2.116(C)(7).

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Deborah A. Servitto